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Self-defense and freedom of the seas.

Donahue, Thomas E.

Judge Advocate General's School

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SELF-DEFENSE AND FREEDOM  
OF THE SEAS

by

Lieutenant Thomas E. Donahue, Jr., U.S. Navy

Thesis  
D6433



March 1964  
yAPI  
T. Donahue

A Thesis

Presented To

The Judge Advocate General's School, U. S. Army

The opinions and conclusions expressed herein are those of the individual student author and do not necessarily represent the views of either The Judge Advocate General's School, U. S. Army, or any other governmental agency. References to this study should include the foregoing statement.

by

Lieutenant Thomas E. Donahue, Jr., U. S. Navy

11

April 1964

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Thesis  
Duke 22

Riverton

Tennessee

July 15, 1964. After a 6 month break, I

have returned to my studies and I am now working  
on a thesis on the modern tactics, techniques and  
historical evolution of the U.S. Cavalry and Armor  
and the changes that have taken place in the last 100 years. I have  
done quite a bit of research and I am now in the process of writing it up.

July 15, 1964. Continued to work on my thesis  
and did some reading.

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#### SCOPE

A study of the relationship between the principles of Self-Defense and Freedom of the Sea prior to and subsequent to the Second World War to determine whether these principles have undergone changes, and if so, how the changes affect their contemporary interaction.

SC052

A study of the relationship between the binocular  
acuity-distance and distance of the eye to the map  
is made to determine whether there is a  
relationship between magnitude of error and the  
distance of the eye to the map.

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## Chapter I

### Introduction

"No State is authorized to interfere with navigation of other States on the seas in times of peace except... in extraordinary cases of self-defense."

This excerpt from Judge Moore's dissent in the *Lotus* Case,<sup>1</sup> generally sets the theme for an examination of the interaction between the principles of self-defense and freedom of the sea. The importance of conducting such an examination has been best stated as follows:

...all peoples can benefit most from a public order of the oceans which secures for all the highest possible degree of shared access to ocean resources and of shared competence over ocean activities and...that a public order adequate to such ends can only be established and maintained by people's effective recognition and understanding of their common interests, with continuous reassessment in the context of the development and change characteristic of the contemporary world.<sup>2</sup>

It can be appreciated that the communal use of the sea might

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<sup>1</sup>Case of the S.S. *Lotus*, P.C.I.J., Ser. A., No. 10, at 69 (1927).

<sup>2</sup>McDougal and Burke, *The Public Order of the Oceans* x, (1962).

CHAPTER I

Introduction

The state is in position to interfere  
with navigation of other states on  
the same in time of peace except...  
in extraordinary cases of self-defence.

This excerpt from Hague Rule 2, discusses the right

Cite, definitely sets the stage for an examination of the  
international practice of discrimination of self-defense and  
warfare of the sea. The importance of commanding such an  
examination can best stated as follows:

...all belligerents can benefit from  
a public order of the oceans which  
accords for all the highest possible  
degrees of sparing access to ocean re-  
sources and of spared commerce over  
seas in activities and...that a public  
order adequate to such ends can only  
be established and maintained by  
means of collective security and  
negotiations leading to their common interests,  
strip continuous reassurance in the  
course of the development and guidance  
characteristic of the continental  
borders.

It can be appreciated that the commandant has at his disposal

Power to stop &c. ships, &c. G.I.L., etc. &c. Mo. 10.  
68 (1951).  
International Law Guide, The public order of the oceans x  
(1953).

be the most effective way in which it can be used for the benefit of all and further, that communal use must be governed by an order to promote effective use and prevent abuse. This order would hopefully define the rights of the users of the sea and those affected by such use and further, provide machinery for the settlement of disputes. Generally, this order or international law, would attempt to obviate the need for unilateral forceful settlement of claims.

The principle of self-defense interplays with that of freedom of the seas in at least three ways: first, a particular use of the sea may include in its justification the right of self-defense; secondly, the protection of previously justified use of the sea against interference; and, finally, the use of the sea to prevent interference with a right in no way connected with the sea.

It is the aim of this paper to examine the relationship between self-defense and freedom of the sea prior to and subsequent to the second world war and to attempt to determine whether these principles have undergone changes and, if so, how those changes affect contemporary interaction between the principles.

be any more effective than it can be used for the  
benefit of all and further, that community use must be encouraged  
in order to promote effective use and efficient operation.

This order may only postpone difficulties, the majority of the users  
of the same will have little say in the matter.  
Dividing responsibility for the settlement of disputes, Government  
and local authorities, will facilitate the administration of justice.  
This order for administrative local government will also  
not principles of self-government

The division of the same in at least three ways: first, a  
jurisdictional one of the several which include in its jurisdiction  
the right of self-government; secondly, the protection of pri-  
vate individual uses of the less important interdependence with  
public, the use of the less frequent interdependence with  
one another and the use of the common property of the state.

It is the aim of this document to make clear to  
the public the nature and functions of the new state prior to  
any amendment of the constitution or the law of the state to  
any dependence of the second kind nor any of either to  
any dependence of the first kind which is to affect the  
rights of private property except by mutual agreement  
between the two, upon those grounds subject to consultation  
with the other party concerned the principles have no effect.

The format of the examination will include a separate consideration of the principles with a brief history of each followed by their application to a number of situations in which the United States has initiated defense programs that have caused interaction between a free use of the seas and self-defense.

## Chapter II

### Freedom of the Sea

#### A. Meaning

It is perhaps best to illustrate the meaning of the term "freedom of the seas" by considering the contemporary and least controversial norms peculiar to this principle. While considering these norms, there should be an awareness that all states, not merely those bordering on the sea, are concerned about the sea and how its use will affect their interest.<sup>3</sup> This awareness hopefully will make it easier to appreciate the exigency of maintaining a freedom of use in, on and above the oceans of the world.

(1) Those who make use of the sea, including the air above and the bed below, may do so for any reasonable purpose not expressly or impliedly prohibited by inter-

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<sup>3</sup>1960 United Nations Yearbook 340-52, (1961).

Chapter II

Leedsport or the Sea

It is perhaps best to illustrate the meaning of the term "Leedsport or the sea" by considering the contemplated and least controversial basis for this principle. After consideration of these bases, there should be no argument as to the sea and its title to the world. In this connection, it is well to note that the sea may now be more easily reached than ever before. This makes it easier to appreciate the significance of maritime freedom of the seas and the oceans of the world.

(1) Those who make use of the sea, including the  
burghs and the port towns, may go so far as to demand  
a franchise of extra territorial rights for a longer  
period than the usual period, say 20 years.

national law,<sup>4</sup> for instance, sea and air navigation, fishing, laying of cables and naval maneuvers. The right to use the sea is thus tempered by reasonableness and the measure of reasonableness should be the effect of a given use or exclusion of use upon the common interest of the international community.

(2) Each member of the international community may exercise exclusive jurisdiction on the high seas over vessels it authorizes to sail under its protection; however, customary international law recognizes a number of exceptions: hot pursuit, i.e. if a ship of state A violates the laws of state B while within waters over which state B is recognized by the international community to exercise sovereign control, state B may pursue the vessel of state A beyond these territorial waters into the high sea if this is so necessary to apprehend the vessel and pursuit is uninterrupted. It should here be noted that while the doctrine of hot pursuit is generally accepted in international law, that area of the sea over which a state may exercise sovereign control

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<sup>4</sup>Fur Seal Arbitration, 1 Int. Arb. 755, (1893); Schwarzenberger, the Fundamental Principles of International Law, 1 Recueil des Cours, 360, (1955).

the intention of the author of the document is to indicate that the  
provisions of the Convention do not apply to the internal situation  
of a State which has not ratified the Convention.

per day. The number of individuals per household was, in general, very small, 200, (202); 100, (203); 50, (204); 25, (205); 10, (206); 5, (207); 3, (208); 2, (209); 1, (210).

is extremely unsettled;<sup>5</sup> any member of the international community may exercise jurisdiction over pirate vessels;<sup>6</sup> any nation may take jurisdiction over a collision case.<sup>7</sup>

(3) The right of innocent passage allows a merchant ship to pass through the territorial waters of another state if prudent navigation so dictates that such a course is the most desirable to reach a given destination.<sup>8</sup> There is, however, a controversy over the right of a warship to make innocent passage.<sup>9</sup>

(4) Vessels in distress have free access to any port in the international community. The mere fact that a vessel claiming distress reaches port under her own power does not deprive her of the right to hospitality, since a master cannot be expected to delay seeking shelter until his vessel is in danger of sinking. However, the actuality

---

<sup>5</sup>See, Law of Naval Warfare, NWIP 10-2, para 412, n 4, (19 ) for a listing of the various limits of the territorial sea claimed by states in the international community.

<sup>6</sup>U.S. v. Klintock, 18 U.S. (5 Wheat.) 144 (1820).

<sup>7</sup>The Belgenland, 114 U.S. 355 (1885).

<sup>8</sup>Jessup, The Law of Territorial Waters and Maritime Jurisdiction 120, (1927).

<sup>9</sup>Jessup, United Nations Conference on the Law of the Sea, 59 Colum. L. Rev. 247-48 (1959); Cf, McDougal and Burke, The Public Order of the Oceans 206, (1962) It is maintained that the International Court of Justice, in the Corfu Channel Case, upheld the right of a war ship to make innocent passage through territorial waters.

the executive authority;<sup>5</sup> a member of the legislature  
commits a criminal infraction over private assets;<sup>6</sup>  
the attorney who takes jurisdiction over a collision case.<sup>7</sup>

(3) The right of innocent passage allows a recipient

right to pass through the territorial waters of another  
state if it demands valid reason to dictate that such a course  
is the most desirable to reach a given destination.<sup>8</sup> This  
is, however, a controversy over the right of a warship to  
expel innocent passage.<sup>9</sup>

(4) Vessel in distress may use force to save

boat in the international community. The mere fact that  
a vessel claiming distress reaches boat under her own power  
does not deprive her of the right of possibility, since a  
warship cannot be expected to delay seeking shelter until  
the vessel is in danger of sinking. However, the activity

(1) (2) (3) (4) (5) (6) (7) (8) (9)  
In 1950, the Law of Territorial Waters and Maritime Jurisdiction was passed, Part of which provides, NMB 10-5, para 413, u.  
for a limitation of the actions limits of the territorial  
sea claims by states in the international community.  
U.S.A. v. Kinnison, 18 U.S. (2 West.) 144 (1820).  
THE Belligerency, III U.S. 325 (1825).  
In 1950, The Law of Territorial Waters and Maritime Juris-  
diction was passed, (1950).  
In 1950, United Nations Conference on the Law of the Sea  
was convened. It has. 343-48 (1950); Cf. McDonald and Bryce, The  
Empirical Study of the Oceanic SO, (1955) If it is maintained that  
the International Court of Justice, in the Corfu Channel Case,  
represented the rights of a war ship to make innocent passage through  
territorial waters.

of the distress will be carefully scrutinized to prevent the working of fraud.<sup>10</sup>

(5) No state may exercise sovereignty over any portion of the surface of the high sea.<sup>11</sup> It should be noted that this principle was not perfected without controversy. Until the end of the 18th century the majority of Europe's littoral states pretended to exercise sovereignty over vast bodies of ocean<sup>12</sup> and presently the trend seems to be reverting to this position.<sup>13</sup>

In summary, the above mentioned norms seemingly evidence a contemporary community recognition that the oceans are susceptible to community use. However, despite the recognition of these benefits, the free uses of the sea are necessarily qualified, first, because freedom cannot

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<sup>10</sup>The New York, 16 U.S. (3 Wheat.) 59 (1818) 68. Majority opinion, delivered by Livingston, J. stated: "The necessity must be urgent, and proceed from such a state of things as may be supposed to produce on the mind of a skilled mariner, a well-grounded apprehension of the loss of vessel and cargo, or the lives of the crew. It is not every injury that may be received---which will excuse the violation of laws of trade---accidents happen in every voyage..."

<sup>11</sup>Colombos, International Law of the Sea 44, (5th ed. 1962).

<sup>12</sup>Id. at 45.

<sup>13</sup>Chile, Ecuador, Peru and El Salvador have extended their territorial sea outward two-hundred miles; the United States, historically a proponent of the three mile territorial sea, reluctantly proposed an extention of the territorial sea to six miles at the 1958 Geneva Convention on the Law of the Sea; Schwarzenberger, the Fundamental Principles of International Law, 1 Recueil des Cours, 366 (1955).

to the classes will be continually scrutinized to prevent  
the growth of irred.

(2) No state will exercise sovereignty over any portion  
of the nation or the right to do so. If it should be voted that  
the principle was not breached without controversy. Until  
the end of the 18th century the majority of Europe, history  
states distinctly of exercise sovereignty over vast portions of  
territory and irreversibly the rising sense of the reversal of this  
position. 13

In summary, the above mentioned rules seemingly aim  
to confer to a community recognition that the absence  
of independence to one may be. However, despite the  
ambiguity of these principles, the rise sense of the se-  
verability of existing dominions, first, because freedom cannot

13 The New York 16 U. S. (1818) 88. Missouri  
Compromise, section 3, article 7, states: "The Legislature  
shall be made, and proceed to form a new state of the Union  
as early as possible so as to give the people of the same  
a full enjoyment without molestation of the laws of their  
own choice to the extent of which they may be  
accorded by the state in which they now reside....".  
11 Co-operative Insurance 17 in the 3d 44 (St. C. 1805).  
12 Id. at 41.

13 Co-operative Insurance, 17 in the 3d 44 (St. C. 1805).  
14 Id. at 41.

15 Missouri Compromise, section 3, article 7, provides that  
no state shall be admitted into the Union which has  
slaves at the time of its admission or before; this duty of States  
is immediately breached by the admission of six  
proslavery states to the Union in 1820. Congress  
therefore, in accordance with the terms of the  
Missouri Compromise, prohibited the extension of  
slavery into the territories now in the possession of the  
United States, and the slaves in those territories  
are now free.

exist without restriction to guarantee an equality of use to all, and secondly, because states are unwilling at present to forego control over adjacent ocean area which they deem necessary to their vital interest, military and economic.

#### B. Qualification of Free Use of the Oceans

##### 1. Territorial Sea

The concept of the territorial sea seems to be the remnant of the principle of exclusive sovereignty over the sea prevalent before and during the greater part of the 18th century.<sup>14</sup> The principal maritime powers of the later 18th century, led by Great Britain, recognized that the advances in spacial uses of the sea rendered the doctrine of absolute sovereignty detrimental to further progress in this direction and Grotius' Mare Liberum superceded Selden's Mare Clausum. However, states were not ready to wholly abandon the concept of sovereignty over those portions of the sea adjacent to the state. There is and was the lingering fear that loss of sovereignty over this area of the sea would be coincident to loss of economic rights, and the ability to defend against seaward aggression. Innocent passage is the single exception that exclusive sovereignty has conceded to freedom of the seas.

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<sup>14</sup>Op. cit. supra n. 8 at 44.

the same time, the question of naval power in the Atlantic is also

of great importance, because there is no country at present

in Europe which can compete with America in naval power.

The question of naval power is also important in the Pacific Ocean.

The acquisition of the sea area of the Pacific Ocean

### British Naval Power.

The conquest of the territories of the sea to the

territory of the British Empire over the

colonies of the British Empire and during the greater part of the 18th

century. At the beginning of the 19th century, Britain had the greatest naval power in the world.

However, in the first half of the 19th century, the naval power of the United States increased rapidly.

In the second half of the 19th century, the naval power of the United States increased rapidly.

In the first half of the 20th century, the naval power of the United States increased rapidly.

In the second half of the 20th century, the naval power of the United States increased rapidly.

In the first half of the 21st century, the naval power of the United States increased rapidly.

In the second half of the 21st century, the naval power of the United States increased rapidly.

In the first half of the 22nd century, the naval power of the United States increased rapidly.

In the second half of the 22nd century, the naval power of the United States increased rapidly.

In the first half of the 23rd century, the naval power of the United States increased rapidly.

In the second half of the 23rd century, the naval power of the United States increased rapidly.

In the first half of the 24th century, the naval power of the United States increased rapidly.

The rapid technological advances in methods of economic exploitation of sea resources, nutritional and mineral, and sophisticated military offensive and defensive systems have apparently caused many states to press for an extension of the territorial sea,<sup>15</sup> rather than searching for adequate protection through methods that would cause minimum delimitation of the free use of the sea. Thus, it appears that unless such a trend is halted, the principle of freedom of the seas will regress rather than evolve.

## 2. The High Seas and The Contiguous Zone.

"As distinct from national waters and the territorial sea, the high seas are those parts of the interlinking chain of oceans which lie to the seaward of the territorial seas."<sup>16</sup> It is within the high sea and the air above the high sea that the principle of freedom of use is primarily applicable, innocent passage being the single exception of any import and this relevant only to the sea, not the air above the sea. The contiguous

---

<sup>15</sup>Op. cit. supra. n. 13.

<sup>16</sup>Schwarzenberger, The Fundamental Principles of International Law, 1 Recueil des Cours, 358 (1955).

This will serve all the conditions you

Leitstötter eft bar arretet. Leitstötter warf tönnig ab.  
nicht qualifiziert eft lo strag waadt eft kann apid eft „ne  
di“, eft Leitstötter eft lo brennt eft of mi! Käfer untagt he  
radd am dörf eft zwoda rie eft Das con dörf eft nüttig si! I  
fusocank „videocam“ vierteling si eou lo wobawt lo elcönig der  
unweler sind uns fröci van lo noitgawd stonig eft gäldt soetung  
euncigend eft „was eft zwoda rie eft zow „wie eft zu vino

1900, Oct. 20th, p. 13.  
The following is a summary of the principles of the  
new, I believe, the only correct, method of  
teaching grammar.

zone is an undefined area of the sea and air above the sea within the high sea.<sup>17</sup> In the contiguous zone, a state may exercise limited, reasonable, and, hopefully, temporary authority, despite an incidental delimitation of the free use of the sea.

The United States has recognized the contiguous zone concept for more than one-hundred and fifty years. In the case of *Church v. Hubbard*,<sup>18</sup> Chief Justice Marshall held that a state had the right to exercise authority on the high sea if the exercise of such authority was reasonable. He equated reasonableness to acceptance by the other members of the international community of the unilateral exercise of the particular authority. Marshall's test of acceptance raises the issue of the less powerful state having to accept the dictates of the more powerful state, in which case the "reasonableness" would be subject to question. If possible, the reasonableness of an exercise of authority would be better tested by an institution similar to the World Court, having jurisdiction over such matters or by treaty.

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<sup>17</sup>Article 24 of the 1960 Convention on the Law of the Sea does limit the contiguous zone by definition to 12 miles. This limitation is contrary to the concept of the contiguous zone and the current practice of the major maritime countries.

<sup>18</sup>6 U.S. (2 Cranch) 187, (1804), "If these laws are such as unnecessarily to vex and harass foreign lawful commerce, foreign nations will resist their exercise. If they are reasonable and necessary to secure their laws from violation, they will be submitted to."

The United States has recognized the contentious zone  
concept for more than one-hundred and fifty years. In the  
case of Champ v. Huppert, 18 Civil Justice Report held that  
a state had the right of exercise authority on the high seas if the  
exercise of such authority was reasonable. The defunct Reasonal  
opinions of members of the other members of the international  
community of the majority exercise of the distinction is suffi-  
cient. Meritability, a fact of acceptance is seen to be  
the non-state party's proof of acceptability of the  
members' "reservations". Only  
one party's state, in which case the "reservations"  
are subject to question. If possible, the reservation of an  
entity of authority may be better tested by an institution  
similar to the original Court, mainly jurisdiction over such matters  
as the P.A. states.

described to receive final government, they will be submitted to the appropriate committee. In turn the responsible authority will make its report to the House of Commons. The House of Commons will then consider the bill and if it passes, it will be referred to the Senate for consideration. If the Senate approves the bill, it will be sent back to the House of Commons for final consideration. This process may take several months to complete.

The function of the contiguous zone should be ".... to serve as a safety valve from the rigidities of the territorial sea, permitting the satisfaction of particular reasonable demands through the exercise of limited authority..."<sup>19</sup> The contiguous zone concept should then allow realization of certain contemporary necessities of a state, defense, economic and sanitary, without the almost total impingement on free use of the sea permitted by the territorial sea concept. Thus, the contiguous zone concept is presently a way to afford the most equitable balance between exclusive and inclusive claims to the sea.<sup>20</sup> Even more importantly, the contiguous zone concept provides a possible escape from the trend towards extension of sovereignty on the oceans. There is no denying that the contemporary climate of the international community seems to require exercise of authority beyond territorial limits,<sup>21</sup> but hopefully man can obtain a more favorable climate and therefore it would be unwise to accept an extension of the

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<sup>19</sup>Op. cit. supra n. 2 at 76

<sup>20</sup>Inclusive claims would be those made by non-littoral and littoral states to keep the sea free of burdens to navigation, fishing, etc., while exclusive claimants demand complete control of certain portions of the sea necessary to protect their security, economic and/or military.

<sup>21</sup>Even Great Britain, historically antagonistic towards the contiguous zone concept, has shown signs of relenting, "Nearly a century has now passed since the unsatisfactory dispute with Spain (over the British Hovering Acts) was allowed to die out, and since then the government of Great Britain has shown an increasing reluctance to resist actively such claims by other states as can be justified on the principle of self-defense." Smith, *The Law and Customs of the Sea*, 21 (2d. ed. 1950).



rigid territorial sea concept, thereby making it more difficult to retreat therefrom when retreat becomes feasible.

".../s/overeignty is not necessarily indivisible, and a comprehensive, continuing competence is easily distinguished from a particular, occasioned competence;... it should require little emphasis that states need not, and surely do not make claims to sovereignty over adjacent waters when they assert claims only to an occasional competence to proscribe for the protection of certain particular interests in specified contexts. The simple dichotomy, 'sovereignty' - 'no sovereignty,' is far from adequate to describe the complex distribution among states of inclusive and exclusive competences over the use of the oceans."<sup>22</sup>

The recognition of at least the necessity of the contiguous zone is best evidenced by the results of the 1958

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<sup>22</sup>Cit. at supra n. 2 at 610.



United Nations Convention on the Law of the Sea. This Convention was attended by representatives of most of the states in the world community.<sup>23</sup> The Convention considered the contiguous zone concept and adopted an Article<sup>24</sup> which reads as follows:

- (1) In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to:
  - (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;
  - (b) Punish infringement of the above regulations committed within its territory or territorial sea;
- (2) The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.
- (3) Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its contiguous zone beyond the median line every point on the baseline from which the breadth of the territorial seas of the two States is measured.

The conception of Article 24 can be traced to a 1956

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<sup>23</sup>United Nations Conference on the Law of the Sea, II Official Records, xii-xxvii (1958).

<sup>24</sup>United Nations Convention on the Law of the Sea, Art. 24, Convention on the High Seas and Contiguous Zone. (1958).

United Nations Convention on the Law of the Sea. This Convention has the effect of a reservation of most of the states

in the area of continental shelf.<sup>27</sup> The Convention considered the continental shelf concept and adopted an Article<sup>28</sup>, which reads

as follows:

(1) In a zone of the high seas contiguous to the continental shelf of the continental shelf states, the coastal State may exercise the control necessary to

- prevent infringement of the laws, regulations or administrative measures adopted within its territory or territorial sea;

(2) Punish infringement of the laws, regulations or administrative measures adopted within its territorial or territorial sea;

(3) Give instructions to the coastguard vessels to prevent infringement of the laws, regulations or administrative measures adopted within its territorial or territorial sea;

(4) Impose the same or the greater of the following penalties on the offenders of each other, without regard to the gravity of the offense, if either of the following circumstances occurs: (a) if the offense is committed by a vessel flying the flag of another state; (b) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (c) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (d) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (e) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (f) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (g) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (h) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (i) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (j) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (k) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (l) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (m) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (n) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (o) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (p) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (q) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (r) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (s) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (t) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (u) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (v) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (w) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (x) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (y) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention; (z) if the offense is committed by a vessel flying the flag of a state which has not ratified or acceded to the Convention.

The Convention of which the following is a summary of the main provisions:

United Nations Convention on the Law of the Sea, II  
Article I: Definitions Article I (1928).

United Nations Convention on the Law of the Sea, III  
Article I: Definitions Article I (1928).

recommendation of the International Law Commission of the United Nations.<sup>25</sup> The limitation of the contiguous zone to twelve miles and the purposeful exclusion of "security" from within the protectable category of interests<sup>26</sup> evidence an impractical approach to the maintenance of the freedom of the seas. The contemporary world situation will not allow such a narrow construction. Advanced methods of fishing, of extracting minerals from the sea and of weapon systems that span continents, make it essential for states to employ the contiguous zone concept for defense of their vital interests.<sup>27</sup>

In summary, the principle of freedom of the sea should direct towards a freedom of use, with only functional limitations, through which all states may equitably share in the

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<sup>25</sup>International Law Commission, Report, U.N. General Assembly, Official Records, p. 39, 11th Session, Supp. No. 9 (U.N. Doc. No. A/3159); United Nations Conference on the Law of the Sea, Official Records, Vol. 2, p. 40 (U.N. Doc. No. A/Conf. 13) (1958).

<sup>26</sup>Op. cit. supra n. 2, at 604 "The Commission (International Law Commission) not only conceived its positive recommendation narrowly, but also undertook to identify interests it thought coastal states specifically should not be permitted to protect in the contiguous zone. The Commission thus specifically emphasized that 'security rights' were not included, offering as justification that 'the extreme vagueness of the term security' would open the way for abuses."

<sup>27</sup>In 1951 there were at least 18 states that claimed contiguous zones for security reasons. Boggs, National Claims in Adjacent Seas, 41 Geographical Rev. 185, 192-201 (1951).

in significant ways, to Geodetic Department W.D.C. 105-505 (1927). Information made available to Bureau of Standards in 1927-1928 by Bureau of Standards, U.S. Dept. of Commerce, Report, U.S. Geodetic Survey, No. 5 (U.S. Govt. Print. Office) ; Charting Mississippian Coasts on the Plan of the Geodetic Survey, Vol. 5, p. 30 (U.S. Govt. Print. Office, 1927).

vast resources of the oceans. However, movement in this direction must be reasoned. The present day world climate cannot be ignored and it will force states to exercise delimitations upon free use in the name of self-defense, hopefully with a realization that the community must continue to move toward a goal that will make such action unnecessary in the future.

### Chapter III

#### Self-Defense

##### A. Meaning

The right to practice self-defense is common to every major system of law,<sup>28</sup> however, its legal function, i.e., what rights may be defended and when they may be defended will be dictated by the nature and development of the system of law in which it must operate.<sup>29</sup> In the international community, for instance, the absence of centralized international order could elevate the principle of self-defense to a right of the highest order while the acquisition of centralized authority would evidence a decline in the precedence of self-defense as central authority assumed responsibility for the protection of the

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<sup>28</sup>Jenks, *The Common Law of Man* 143 (1958).

<sup>29</sup>Bowett, *Self-Defense in International Law* 1, (1958); Op. cit. supra n. 16 at 342.

the same, except that a double action revolver is used.

Capítulo III

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communities members.

"On the level of unorganized international society, the problem of self-defense is entangled intricately with that of the place of war in international law,"<sup>30</sup> since if states could legally resort to war at will, the function of self-defense would be minimal. Accordingly, a short consideration of the historic right to resort to war in international law will aid in understanding the evolution of the principle of self-defense.

The international community evidences a long history of struggle in its attempt to bring war within the law. Each formulation of a doctrine to distinguish just and unjust war has been ..."so elastic that state practice found little difficulty in justifying in terms of just war any type of war, be it preventive or down right aggressive."<sup>31</sup>

Short of war, there were forms of self-help and reprisal in those situations in which a state failed, under customary international law, to live up to its responsibilities. In these situations, a state could either submit to these limited forms of pressure<sup>32</sup> or resist by force. If

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<sup>30</sup>Op. cit. supra n. 16 at 327.

<sup>31</sup>Id. at 328; Hitler justified the German invasion of Poland in 1939 on the grounds of self-defense.

<sup>32</sup>For instance, pacific blockade, embargo, and naval demonstrations displaying a show of strength.

affair to give him a show of strength.

it is assumed that reprisals were lawful, it must be conceded that resistance to their lawful appreciation would be illegal, however, in the unorganized society of international law, there existed no objective judge of their legality. "Thus, a state may treat them as illegal and apply counter-reprisals. Moreover, if a state contests the legality of such reprisals, it is always in a position to plead self-defense."<sup>33</sup>

The first "concrete" step toward the elimination of war was taken in 1928, in the Kellog-Briand Pact, in which the use of war as a national policy was declared to be illegal. The text of the Kellog-Briand Pact did not mention the principle of self-defense but the position of the United States as set forth by Mr. Kellog, then Secretary of State, made it obvious that a war in self-defense was justifiable.<sup>34</sup> Thus the principle of self-defense, which by circumstances had been confined in application to situations short of war,<sup>35</sup> was shifted to center stage in the world arena. It now became

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<sup>33</sup>Op. cit. supra n. 16 at 328.

<sup>34</sup>Mr. Kellog's note of June 23, 1928 stated that, "there is nothing in the American draft of the anti-war treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require resort to war in self-defense." (emphasis mine).

<sup>35</sup>So long as aggressive war was justifiable under customary international law, the principle of self-defense was primarily considered only in exertions of force short of war.

it is necessary that initiatives here begin, if this is to be conceded,  
that recognition of their right to self-determination may be illiberal,  
however, in the majority of society of international law, there  
exists an objective basis of their legality. Thus, a state  
may claim itself as legally and fully counter-revolutionary.  
Once,  
if a state considers the legality of such rebellion,  
it is always in a position of legal self-defence." 33

The first "conference" step toward the elimination of  
war was taken in 1928, in the Kellogg-Briand Pact, in which  
the use of war as a national policy was declared to be illiberal.  
The text of the Kellogg-Briand Pact did not mention the  
principle of self-defence but the position of the United  
States as set forth by Mr. Kellogg, then Secretary of State,  
was to oppose any war in self-defence as非法的. 34  
Thus the principle of self-defence, which by circumstances  
had been confined to situations of self-defence, is now become  
the central idea in the world arena. If now peace

comes, it will be a victory of the Kellogg-Briand Pact, "which is  
designed to prohibit all war save that of self-defence. This  
action is impossible in the American case or in the multi-national  
state or empire in which the war is likely to be illiberal.  
Right is important in every situation and illegitimate  
right. Every nation has its times and moments of in-  
justice. Every provision of dealing its territory from attack or in-  
vasion and it alone is alone in self-defence." (emphasis ours).  
Thus, if war is illegal in self-defence, it is legitimate under certain  
circumstances. This provision is the only one in the Kellogg-Briand  
Pact that is not as absolute as the other provisions are. It is  
considerable only in distinction to those apart of war.

necessary to formulate just what customary international law meant by self-defense, since this principle alone would justify unilateral resort to war.

### 1. Self-Defense in Customary International Law

The precepts of self-defense emanating from the 1838 negotiations between the United States and Great Britain concerning an invasion of United States territorial integrity by the British,<sup>36</sup> are worthy of note, since they seem to have been adopted by international law to both justify and criticize use of force. It is to Daniel Webster, in his capacity as secretary of state for the United States, that the credit must be given for formulating those precepts in the following definition of when self-defense may be used: "A government alleging self-defense must show a necessity of self-defense, instant, overwhelming, leaving no choice of means and no moment for deliberation."<sup>37</sup> In addition to Webster's formula treating the question of when self-defense may be exerted, the Caroline and McLeod episode, out of which these

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<sup>36</sup>The Caroline and McLeod Cases, II Moores Digest 409.

<sup>37</sup>Letter from the Secretary of State to the British Minister, 6 Works of Daniel Webster 306 (12th ed. 1860) (emphasis mine).

accessory to torts etc. but not criminal or civil  
actions by self-defense, since this principle alone would  
justify military resort to war.

### I. Self-Defense in Constitutional Interpretation

The principles of self-defense emanating from the  
1838 negotiations between the United States and Great  
Britain concerning an invasion of United States territory.  
Totality intended by the British, <sup>as far as possible</sup> of note, since  
they seem to have been adopted by interpretation of both  
parties and critics use of force. It is to Daniel Webster,  
in his capacity as secretary of state for the United States,  
that the credit must be given for formulating those principles  
in the following definition of when self-defense may be used:  
"A government illiberal self-defense must show a necessity of  
self-defense, instant, overwhelming, leaving no choice of means  
but no more for self-defense." <sup>33</sup> In addition of Webster's

formulation finding the distinction of when self-defense may be  
exercised, the Courts and McCook episode, out of which these

<sup>32</sup> Ladd Crockett and McCook Case, II Moore's Digest 400.  
a work of Daniel Webster 300 (12th ed. 1860) (Opposite page).

negotiations grew, treated of what rights a state might defend. The case stands for the proposition in customary international law that territorial integrity is "on one hand....a right which may be protected by the exercise of self-defense, and on the other it may be subject to the right of self-defense of other states."<sup>38</sup> This concept would equally apply to ships by applying the fiction that a ship represents the territory of its flag.

The obvious contextual difficulty with Mr. Webster's test is its subjectivity.<sup>39</sup> While it is true that given an organized judicial system the application of Mr. Webster's test would be as capable of judicial determination, as the reasonable man test,<sup>40</sup> in an unorganized international society, permitting each state to exert force based on its own subjective appraisal of necessity causes untold difficulty. The lack of an effective judicial organization to determine the legality of an exertion of force in self-defense renders the test less than perfect.

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<sup>38</sup>Op. cit. supra n. 29 at 31.

<sup>39</sup>Cf. McDougal and Feliciano, Law and Minimum World Public Order, 217 (1958) which states that the language of Mr. Webster's test if read literally, ...."is cast in language so abstractly restrictive as almost....to impose paralysis."

<sup>40</sup>For example, the judgement of the International Court of Justice in the Corfu Channel Case, however, this court has jurisdiction only if the parties involved voluntarily submit.

negotiations item, therefore to what rights a state might demand.  
The case stands for the proposition in customary international  
law that territorial integrity is "an one point.... a right  
which may be breached by the exercise of self-defense,but  
on the other it can be subject of the right of self-defense  
of other states".<sup>38</sup> This concept would apply to abide  
by applying the fiction that a third represents the territory  
of its ally.

The obvious contextual difficulty with Mr. Webster's  
test is its subjectivity.<sup>39</sup> What is it at this time that gives us  
a valid application of the doctrine of self-defense, as Mr. Webster,  
testimony as an example of judicial interpretation, says  
lessons of law and fact,<sup>40</sup> in an undetermined interpretation of  
permitting every state to exert force based on its own interpretation  
of necessity or national defense against the aggressor  
as a legitimate justification of self-defense, so that the  
same aggression may be resisted.

<sup>38</sup>ibid. cit. infra n. 36 at 31.  
Other, 212 (1945) which states that the language of Mr. Webster's  
interpretation of Article... is impossible to interpret  
nowadays, for reasons of the circumstances of the  
justice in the certain changes that have occurred since  
that date only if the previous interpretation

The proposition in Caroline and McLeod that a state might go outside its territory into the territory of another for purposes of self-defense, made it relatively easy to support a contention that states could exert force in the high sea adjacent to their territory. If the sovereign territory of a state could be invaded in the name of self-defense, surely the high sea would be subject to the same condition.<sup>41</sup> Church v. Hubbard recognized the application of this principle to situations occurring on the high seas.<sup>42</sup>

The application of the principle of self-defense to situations arising on the high seas seems to have been sustained or justified on the basis of reciprocity. In an unorganized international society, the problems stimulating recourse to delimiting actions have been coincident to most, if not all, littoral states. "There is, however, no agreement on the precise nature of the circumstances which enable this protective jurisdiction to be exercised or on the forms of prevention of which a state may have recourse in the exercise of its right to self-defense."<sup>43</sup> Based on this admittedly vague principle, it has been the practice of states to exercise jurisdiction in waters adjacent to the territorial

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<sup>41</sup>Op. cit. supra n. 29 at 66.

<sup>42</sup>Op. cit. supra n. 18.

<sup>43</sup>Op. cit. supra., n. 29 at 66.

The proposition in China and Japan that a state  
ought to dominate its territory into the territory of another  
for purposes of self-defense was if relatively early to appear  
as a counteraction that states could exert force in the right set  
of circumstances of their territory. If the voluntary territory  
was to be used in the case of self-defense, surely  
the right was only to subject to the same condition.<sup>43</sup> Closely  
connected with this principle of  
self-defense occurring the application of this principle to  
situations occurring on the high seas.

The application of the principle of self-defense to  
international law of sea was seen to be no better; namely  
that of the right to defend one's own territory. In an ad-  
ditional international society, the principle of self-  
defense of existing actions had been considered of most  
importance. There is, however, no such principle  
as the principle of self-defense of non-existing actions.<sup>44</sup> This  
means that the basic nature of the circumstance which applies  
to the protective function of the law of self-defense  
is the protection of those who have recourse in the  
exercise of rights or self-defense.<sup>45</sup> Based on this ap-  
plication above principles, it can be the doctrine of  
self-defense that of course the right of self-defense

410. cit. Amb. u. 20 of 90  
411. cit. Amb. u. 10.  
412. cit. Amb. u. 25 of 90

sea for the protection of fishing, sanitation, customs, rights, and security.<sup>44</sup>

In the latter part of the 19th century the United States seized a number of unlicensed British Columbian sealing schooners operating outside United States territorial waters in the Behring Sea. The British protested the seizures and the United States and Britain agreed to submit the dispute to arbitration.<sup>45</sup> The United States counsel contended before the arbitrator that "the right of self-defense...is a perfect and paramount right to which all others are subordinate; that it extends to all material interests...important to be defended; that in time, place, the manner, and the extent of its execution, it is limited only by the actual necessity of the particular case;..."<sup>46</sup> The Tribunal of Arbitration found in favor of Britain, rejecting the above claim<sup>47</sup> as well as the United States contention that there was a property interest in the seals, the seals having come from United States territory.<sup>48</sup> Thus, the right of a state to protect is possible

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<sup>44</sup>Op. cit. supra. n. 8 at 105.

<sup>45</sup>Oppenheim, International Law 620 (8th ed. Lauterpacht 1955).

<sup>46</sup>Fur Seal Arbitration, 1 Int. Arb. 839-40 (1893).

<sup>47</sup>Cheng, General Principles of Law 94, (1953).

<sup>48</sup>Id. at 499.

see for the protection of licensing, sanitation, commerce, imports,

and security.<sup>4</sup>

In the latter part of the 19th century the United States  
enacted a number of Unnecessary British Competition Legislation  
scooping out entire United States territory before  
the British Govt. The British protecting the interests and  
the United States supporting the dispute to the dispute  
to application.<sup>5</sup> The United States considered policy  
the position that "the right of self-determine...is a basic  
and fundamental right of mankind all over the world"; that  
it extended to all material interests...important to be ad-  
vanced; that in time, place, and manner, and to the extent of  
the execution, it is limited only by the actual necessity  
of the particular case;...<sup>6</sup> The Tribunal of Arbitration  
found in favor of Britain, rejecting the above claim.<sup>7</sup> As will  
be the United States contention that there was a possibility  
of interest in the same, the said panel come from United States  
territory.<sup>8</sup> Thus, the right of a state to protect its bor-  
ders.

<sup>4</sup> Cf. ante, n. 8 at 102.

<sup>5</sup> (Cf. ante, n. 8 at 102.)  
International Convention No. 920 (S.P. 1923).  
Treaty of 1921 Arbitration, 1 Int. L.J. 89-90 (1923).  
Cited, General Principles of Law 86, (1921).  
Ibid. at 460.

vital foodsource was subsumed to the principle of the free use of the seas.<sup>49</sup>

Again, self-defense has been the basis upon which states exercised authority in the waters adjacent to the territorial sea for the protection of customs, fiscal and sanitary regulations.<sup>50</sup> It was considered that the same basis existed for the protection of these interests as existed for the protection of territorial integrity, i.e., conditions of entry, even though perhaps in a lesser degree.<sup>51</sup>

Customary international law has long recognized state practice of exercising authority in waters adjacent to their territorial seas for the purpose of security.<sup>52</sup> Again, the justification seems to be reciprocity.

In 1873, a ship of American registry, the Virginian, was apprehended by a Spanish warship on the high seas while in the vicinity of Cuba, at that time a Spanish possession.

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<sup>49</sup>British counsel in the Fur Seal Arbitration made a statement to the effect that if the purpose of the British fishermen was not to exercise their own rights but to maliciously interfere with the rights of the United States, such action would be improper and the President of the Tribunal concurred; Op. cit. supra, n. 8 at 121-22.

<sup>50</sup>Op. cit. supra, n. 8 at 105.

<sup>51</sup>Op. cit. supra, n. 29 at 67.

<sup>52</sup>Op. cit. supra, n. 8 at 96.

in the vicinity of Oviedo, at first time a Spanish possession.  
was distinguished as a Spanish Marquis on the right side while  
in 1823, a ship of American Registry, the Alquimista,  
negotiation seems of an amicable.  
peculiar case for the purpose of security. As Alquin, the  
descriptive of exercitacion militaria in letters addressed to their  
Chancery illustration of how was now recorded safe  
every supply because in a lesser degree. It  
section of exercitacion militaria, i.e., conditions of extra-  
the protection of these interests as before for the bro-  
tional, if the condition of these interests as before for the bro-  
the exercise of military, i.e., conditions of extra-  
tion of exercitacion militaria, i.e., conditions of extra-  
every supply because in a lesser degree. It

The Spanish claimed that the vessel was fictiously registered and carrying arms to Cuban insurgents. The Spanish, on this basis, considered the act piracy and executed the crew which included American and British subjects.<sup>53</sup> The United States and Britain protested the executions but not the seizure of the ships,<sup>54</sup> apparently considering the principle of self-defense as justification for the seizure,<sup>55</sup> and, at the same time, as a prohibition to the executions. Thus, it is seen that while self-defense may be proper in a given instance, the application of excessive force might alter the role of the defender to that of the aggressor.

In summary, the examples are many for the proposition that international customary law recognized the right of a state to exercise force in defense of its rights even at the expense of the rights of others in situations concerned with the high seas.<sup>56</sup> It is even possible to formulate a

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<sup>53</sup> II Moore's Digest 880, 895.

<sup>54</sup> In a later case, the Mary Lowell, the United States argued before the Anglo American Mixed Claim Commission, that the support of this theory of self-defense was contra to the principle of freedom of the seas. III Moore's Arbitrations 2772-2777.

<sup>55</sup> Fur Seal Arbitration; Japanese invasion of Manchuria in 1931; German invasion of Norway; Church v. Hubbard; Virginus; Caroline; Custom and fiscal regulations.

<sup>56</sup> Op. cit. supra. n.29 at 11.

the general principles of the Constitution were violated by legislation  
and carried into effect by Capau Insuridantes. The General, on his  
part, considered the act illegal and executive the same  
immediate American and British subjects.<sup>23</sup> The United States  
by giving protection to the executions put not the entire  
of the slaves,<sup>24</sup> particularly considering the responsibility of self-  
government for the same.<sup>25</sup> But, at the same  
time, no opposition to the execution. Thus, it is seen  
that while self-government may be proper in a given instance,  
the application of such a principle after the loss of  
the colonies to that of the master.

In summary, the objections are many for the bill of separation  
that international controversy has received the right of  
exercise of executive power in defiance of its right even to  
the adoption of the acts of others to situations concerning  
the rights of the people now. It is even possible to infer that a  
bill of rights, 26

such as Justice Cox, John M. Jones, the United States having  
been made International Civil Commission, that the  
subsequent to this time be held between the countries to the dominions  
in accordance to the law. III. Moore's Arbitration 233-234.  
Thus, the right of international arbitration is  
to submit the question to the court; Church A. Hopper; African;  
Carolyn; Ogden and local election.  
26. See, note, 22 of II.

a definition of self-defense in customary international law.

Self-defense might be said to be the privilege of a state to lawfully exert force against another state or against individuals to a degree necessary to protect its vital interests, military and/or economic, from illegal acts or omissions. Self-defense does not include: (1) Self-help, which, though similarly dependent upon a prior illegal act,<sup>57</sup> does not function to preserve the status quo but rather effects reprisals to enforce an international duty that would attach to the perpetrator of the illegal act; (2) Necessity and/or self-preservation which stand for a mere recognition that ability to abide by law is limited and therefore the failure to do so in given circumstances will excuse the illegal act or omission.<sup>58</sup>

The first difficulty with this definition is the inability of an unorganized international society to objectively determine the categories of illegal acts or omissions. Subsequently, each state uses a subjective criterion based upon its vital interest as it sees them. The inevitable result is the equation of self-defense to self-help, necessity, or self-preservation.

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<sup>57</sup>Op. cit. supra, n. 16, at 342.

<sup>58</sup>Op. cit. supra, n. 16 at 342.

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The second difficulty arises in deciding when, assuming there is an agreed upon right that may be defended by force, a state may resort to force.

It is fitting to end this very brief discussion of self-defense in customary international law with the observation made by John Bassett Moore that "...the attempt to so define self-defense that its future application would be clear and practically automatic is just as futile as the attempt to define aggression has been...."<sup>59</sup>

## 2. Self-Defense Subsequent to World War II

Consideration of the principle of self-defense subsequent to world war II is in affect a consideration of the United Nations Charter, man's best effort to date in his desire to establish order under law. Any consideration of the Charter profits by first examining the purposes of the organization as set forth in its preamble and first article. The preamble states,

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and

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<sup>59</sup>The Collected Papers of John Bassett Moore 448 (Vol. 6 1944).



worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples.

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

Article I states the purposes of the United Nations Organizations, and they are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by

is also felt as a strong natural force which  
attempts to bring men back to a state  
of simple honesty or truth. There has  
been much good music and literature  
written under this influence from time  
to time. The old idea of the divine  
and spiritual source of art is still  
alive, and probably stronger than ever.  
It can be maintained, and probably  
will be maintained, that art is  
the expression of the divine, and  
that it is the highest expression of  
the divine.

ANSWER TO A

to discuss possible joint venture and live together in  
peace with no masters as good neighbors,  
- and to unite the states of America in  
federation based on security and freedom and  
- that the association of Americans and  
the institution of federates, that should force  
several to do in the common interest,  
- itself, to the advantage of the people and  
the economy of all bodies.

HAVE RESOLVED TO COMBINE OUR EFFORTS TO

THESE ARE THE PICTURED, OR THE SPECIFIC GOVERNMENT,  
TAKEN IN THE UNITED STATES OF AMERICA, ON THE  
20TH DAY OF JULY, ONE THOUSAND EIGHT HUNDRED AND  
TWENTY-ONE, BY THE SECRETARY OF THE TREASURY.  
IN WITNESS WHEREOF, I HAVE SIGNED THIS CERTIFICATE  
IN THE CITY OF SAN FRANCISCO, AND HAVE EXPIRED  
THEREIN, DATED FORTY-EIGHT YEARS FROM THE DATE  
WHICH THIS CERTIFICATE WAS ISSUED.

Because I started out to research Native American medicine, I began out to research Native American medicine.

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the dates of publication or after payment  
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The piece, and for the application  
of the piece to the newspaper.

peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

This introduction to the United Nations Charter, as might be expected, gives a clearer picture of where the international community has been and where it hopes to go rather than the particulars of how it plans to get there. The particulars of the plan are set forth in the body of the Charter and like all particulars, are most relevant when considered in context. Thus, it might be argued that unless the purposes and goals of the preamble and first article, or in other words, the materials that determine the contextual reference of the Charter, are continually in mind when examining any given subsequent article, the likelihood of the misinterpre-



tation of the article is greatly enhanced.

It was noted earlier that the Kellog-Briand Pact prohibited signatory states from using war as a tool of national policy. Article II, section 4 of the United Nations Charter strengthened and added to that prohibition.

The Article states,

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

4. All Members shall refrain in their international relations from the threat or use of force against territorial integrity or political independence of any state or in any other manner inconsistent with the Purposes of the United Nations.

Thus the threat of force was included in the prohibition and use of the word "war," which had created problems<sup>60</sup> in the Kellog-Briand Pact, was excluded. This change of approach to the problem of control of war through law is not surprising when considered in context. As the Preamble of the United Nations Charter states, "We the People of the United Nations determined to save succeeding generations from the scourge of war, which twice in our life time has brought untold sorrow to mankind ....," the second war not only more destructive than

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<sup>60</sup>Countries exerted force without declaring war thereby having the argument that "war" was not being used as a national policy in contravention of the Kellog-Briand Pact.

position of the service is itself, apparently

If we had earlier made the Kiel-Giessen pact  
between military states from us and war as a tool of  
national policy. Article II, section 4 of the United  
Nations Charter reserves and adds to the following  
provisions.

The article states,

The organization of the League, in particular,  
shall be the basis of international relations among  
soil and in accordance with the following  
principles.

II member states in their in  
relations among themselves from the first  
use of force against another  
independence or political independence  
of any state or in any other manner  
in consequence of the  
United Nations.

Thus the first of these was included in the following  
in 1945, which had closest body in  
the United Kingdom's part, was adopted. This principle of respect  
to the decision of one of the members if it is not required  
by the circumstances of the case. It is  
more恭敬地 in the country. As far as respects  
United Nations Charter, the principles of the United Nations  
determination of who and what decisions shall be the second of  
which refers to all that kind of foreign mission  
and "the second and only main constitutional prin-

-ciple is to determine who and what decisions shall be the  
basis of a new and permanent peace.

the first but a preview that the third would be more destructive than man's mind could comprehend.

A consideration of Article 2, section 4 in conjunction with the purposes of the United Nations, can arguably result in a conclusion that the Article proscribed even the use or threat of force in self-defense. While all would agree that self-defense was a basic principle, few would argue with its history of abuse and hence the selection of the greater good might arguably justify the elimination of the principle in the interest of world peace. Either this or some other unknown factor caused the delegates at San Francisco to press for and finally adopt an Article defining the right of a state to exert force in self-defense either collectively or individually.

There are those who maintain that no additional article was necessary because, under their interpretation of Article 2, section 4 and the purposes of the United Nations, the principle of self-defense as recognized by customary international law was in no way limited by Article 2.<sup>61</sup> It can be assumed that a number of delegates in San Francisco did not share this

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<sup>61</sup>Op. cit. supra, n. 29 at 188.



view because their fears were sufficient to cause the adoption of Article 51 which reads as follows:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

The language of Article 51 evidences an obvious recognition of an existing, inherent right of self-defense. Does it attempt to redefine the uses of this inherent right? There can be little argument that it does attempt to redefine the use of the right of self-defense. The Article requires a member using force in self-defense to report such use to the United Nations Security Council and to permit the Council "...to take at any time such action as it deems necessary in order to maintain or restore international peace and security." Such was not the case in customary international law where a state could continue to exert force until the danger was removed.



This is no little sacrifice. The state was now required to submit to the will of the United Nations in combating what it considered to be a danger to itself. The above example negates the argument that Article 51 merely restates the customary international legal rights of a nation to act in its defense.

The reason for this limitation is clear. If the United Nations was to fulfil its stated purposes it could hardly allow its members or non-members to continue an initial exertion of force uncontrolled. Accordingly, the right to resort to unilateral or collective self-defense was reduced to an interim measure. If this limitation is so obvious, it does not appear unreasonable to examine the language for additional limitations, particularly in face of the logic, that control of the initial right to exert force would assist in effectuating the purposes of the United Nations more so than control of the force subsequent to its initial exertion. An examination of the language of the Article in this context causes the examiner to pause in the very first sentence, "Nothing...shall impair the...right....of self-defense if an armed attack occurs against a member..." Is it unreasonable

This is an historical document. The state was in the process of becoming a member of the Commonwealth of Australia. The space available for the preparation of the Constitution was limited by the fact that it had to be agreed to by all states before it could be submitted to the people for ratification. The document is a compromise between the views of the Federalists and the Anti-Federalists. It attempts to balance the need for a strong central government with the desire for states' rights and individual freedoms. The document is written in a formal, legal language, reflecting the importance of the principles it contains. It is a significant part of Australian history and continues to influence politics and law to this day.

to assume that this language was originally meant to prohibit a state, individually or collectively, from resorting to the use of force until it suffered an armed attack? To exclude this possibility on the sole basis that the contemporary state of world affairs so dictates, would seem to ignore the context in which the Article was drafted, as well as the stated purposes of the United Nations. This argument is not meant to imply that contemporary considerations of self-defense should ignore the present state of affairs, but that perhaps contemporary considerations of self-defense, rather than attempting to justify individual or collective right to resort to use of force in self-defense on a unrealistic interpretation of what Article 51 meant when it was drafted, admit that Article 51 and the United Nations failed to present the hoped for framework within which the use of force could be controlled. This admission would perhaps clear the air and allow the search to continue for a suitable framework within which the exertion of force will be subsumed to law.



### Chapter III

#### Contemporary Self-Defense Measures Affecting the Free Use of the Sea

The concept of self-defense is not limited in coverage to those situations concerning nuclear attack or similar extreme situations.<sup>62</sup> Article 2 section 4 of the United Nations Charter does not include the term "war" and as previously stated, the juridical difficulties coincident with its use have been avoided, however, the positive benefit derived from the exclusion of the term is the broadening of control to include situations that may escalate as well as those that are extremely dangerous per se. The foresight here present, whether actual or imagined, has been beneficial. It is not the threat of nuclear war or armed invasion that daily confronts the decision makers but the lesser and more subtle exertions of force and threats to do so. Therefore, the proposition that all acts of states interfering with the free use of the sea must look to the Charter for justification is valid, particularly those situations which may depend on force for their implementation.

There are at least three areas in which the principle

<sup>62</sup>Cf. McDougal and Feliceano, Law and Minimum World Public Order 212-213, (1961).

Capítulo III

Affectionate use Free use of the self-Defense Law will be

The concept of self-dissolve is not limited in cover -  
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Nations Charter does not include the term "war" say as hosti-  
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derived from the exception of the case is the broadening  
of control of nations situations that may scatiate as well  
as those that are extremely dangerous per 25. The legislists  
per desert, whether intent or imagined, has been peno-  
tificial. It is not the fault of the law of armed invasion  
that daily constitutes the decision marks out the lesser and  
the ample exercices of force and threats to do so. There-  
fore, the legislation that all acts of state preferred is  
into the line use of the vast tool of the Charter for  
punishment is valid, strategically pursue situations which  
may depend on force for their implementation.

There are at least three ways in which the basic idea can be modified.

Order 215-515, (1981).

of self-defense may interact with the principle of freedom of the sea: first, self-defense may be given weight, along with other factors, in determining the reasonableness of a particular use of the sea. For example, naval maneuvers might interfere with the free use of the sea but self-defense may make the interference reasonable; secondly, after a particular use of the sea is deemed reasonable, self-defense becomes relevant in the protection of the said use, for example, upon which occasions and to what extend may force be used to prevent interference with naval maneuvers; and finally, interference with the free use of the sea to prevent the maturation of a threat which is in no way connected with the sea, for example, a naval blockade to prevent importation of weapons that may be used against the state imposing the blockade.

The evolution of world politics since the termination of World War II and the staggering technological advances in both exploitation of sea resources and methods of destruction, have prompted the United States to employ certain measures or devices which it considers necessary to protect national and hemispheric interests, military and economic. Some of these measures or devices interfere in varying degrees with

of self-government may interfere with the principles of race.  
Some of the self-governed may be given rights,  
some with other factors, in determining the responsible  
of a particular race or the race. Not only, naval  
matters involving with the race of the sea but self-government  
and also the international response; secondly, after a  
battle-cry as of the sea is deemed responsible, self-government  
process relevant to the protection of the sea, for ex-  
ample, upon which occasions extending to locate  
the area of present influence with naval names, and  
thirdly, influence with the race of the sea to  
avert the intrusion of pirates who may conduct  
strip the sea, for example, a naval blockade to prevent imbar-  
cation of vessels from the states in bordering  
countries of which the pirates may be guilty.

The blockade.

There are three ways of blockade, namely, a blockade of  
certain ports or places of refuge to intercept the  
vessel approaching the coast of the country to  
which they belong, or a blockade of certain  
ports or places of refuge to intercept the  
vessel belonging to the country to which they belong,  
or a blockade which is necessary to protect navigation  
or commerce against military, militia and economic  
aggression or deviates in various degrees with

the rights of others to use the sea and the air above the sea, and therefore, must be examined as to degree of interference and implementing force required for their maintenance if a proper analysis is to be made as to their reasonableness and hence acceptability in international law.<sup>63</sup>

The United States, on a number of occasions, has for all intents and purposes closed off vast reaches of the Pacific Ocean to conduct nuclear weapons tests.<sup>64</sup> On first consideration this degree of interference would appear unreasonable if for no other reason than the scope of the area involved, however, an examination of the attending facts reduces the unpalatability and uncovers evidence upon which an argument of reasonable use might be bottomed.

There is no inconsistency per se in maintaining that a nation may not exercise "sovereignty" over any portion of the high sea and simultaneously attempting to justify the position of the United States as concerns the Pacific nuclear

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<sup>63</sup> McDougal and Schlei, The Hydrogen Bomb Tests in Perspective 64 Yale L. J. 648, 660 (1954-1955).

<sup>64</sup> For example see U.S. Navy Hydrographic Office, Notice to Mariners, pt. 2, No. 21, Para. 2716 (May 23, 1953) which declared a zone covering some 400,000 square miles of the South Pacific as unsafe during and for sometime after the testing of nuclear weapons.

the rights of option to use the car and the above type  
car, and privilege, was to exchange to get  
tercure and insurance license for this minivan  
as possible. This is to prove to you  
that some application has  
been made.

The United States, on a number of occasions, has  
had unique and unusual cases close to vast ranges of the  
United States. On this  
basis, the country can conduct many bonuses tests.<sup>4</sup> On this  
consideration this degree of intelligence would appeal un-  
less possible if for no other reason than the scope of the area  
involved; however, the exchange of the affected race is  
done the number of participants and number of drivers as  
many as possible. In this case the  
right of possession, we might be performed.

This is so important that  
a certain way not exercise "overdue duty" over the position of  
the driver or driver of a vehicle which has been  
position to the United States as concerns the police un-  
less

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On October 1939, The Highways Board Test is for  
abortion of Asia L. J. 48, 660 (1954-1072).  
This example was U.S. Navy Hydrographic Office, Notice  
to Mariners. No. 21, May 23, 1954 (MAY 23, 1954) which  
describes a ship carried a 400,000 miles of the  
mainly coastal marine currents and their movements after the  
formation of the present world.

weapons tests. The principle of freedom of the seas is of major importance to the community of nations, but it can hardly be maintained that all other interests of the international community should be subsumed to this single principle.<sup>65</sup> It has been illustrated above<sup>66</sup> that an occasional, temporary competence over a portion of the oceans is not necessarily within the historical prohibition of comprehensive, continuing competence embodied in the meaning of the term "sovereignty." An application of the theoretical proposition that the oceans in their entirety must be free at all times to all would be users, contravenes the very purpose of freedom of the sea, i.e. that the sea be used to the benefit of the entire community.

The simplest justification of this use would be the remoteness of the area of ocean in which the nuclear weapons were tested. This area was removed from any major shipping lanes or major fishing grounds<sup>67</sup> thus the United States, while cognizant of its right to use the sea, evidenced a consideration of rights of others to do likewise.<sup>68</sup> Additionally, the

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<sup>65</sup>Op. cit. supra n. 63 at 663.

<sup>66</sup>See text at n. 22.

<sup>67</sup>Op. cit. supra. n. 63 at 682-683.

<sup>68</sup>For example, the Soviet Union conducted nuclear weapons tests in a remote part of the Pacific Ocean.

of the area, this spot the sea has been or the peninsula to the  
westward was, contains the very breadth of the ocean  
and the ocean is to the west. Malaria must be here at all times  
as it seems to the people in the interior probably  
as far as the coast. The country is very flat  
and the soil is very poor. It is the same soil  
as is found in the interior, though  
it has been cultivated upon <sup>for</sup> an occasion, probably  
comparatively but a portion of the season is not necessary  
to ripen the grain, though it continues  
to grow until the first frost. The  
country is very flat, and the soil  
is very poor. It is the same soil  
as is found in the interior, though  
it has been cultivated upon <sup>for</sup> an occasion, probably  
as far as the coast. Malaria must be here at all times  
as it seems to the people in the interior probably  
as far as the coast. The country is very flat  
and the soil is very poor. It is the same soil  
as is found in the interior, though

that the best way to do this is to use the **REVERSE** command.

United States may further support the reasonableness of this use with the claim of necessity in the interest of self-defense and scientific progress. The tests were surely not mere arbitrary usings of a resource for the purpose of exercising a right, but a purposeful and beneficial use.

The remoteness of the area chosen for nuclear weapons testing minimizes the aspect of an implementing force to keep the area free of commerical sea and air traffic, however, it does not remove the necessity for a consideration of this subject. If it is assumed that the use of a particular area of the ocean is reasonable and further that the nature of the use will permit of only a single user at a given time, has anyone the right to interfere with the user? In the context of this problem the answer would be no, but the more important issue is by what means interference can be prevented and by whom. Unfortunately there is no acceptable contemporary solution if the solution is sought within the framework of effective control of unilateral exertion of force by international law, as it must be if force is to be effectively controled. A state might subscribe to this view but at the same time it must be cognizant of the fact that an interim method of enforcement is necessitated in cer-



tain situations. This interim method might be labeled "administrative police power" and would hopefully be used sparingly and without force of arms where possible. Without such an interim measure the interaction of states takes on a utopian aspect.

The United States has constructed radar towers outside the territorial waters to provide warning of the approach of unidentified aircraft. The towers are removed from commercial areas and use no more space than a modern merchant ship at anchor. As discussed above, the United States has a right to use the ocean and incidental reasonable interference resulting therefrom is an accepted requisite of use. The interference with the free use of the sea attributable to the radar towers is diminimus and few would argue as to its reasonableness, whether on the basis of self-defense or air navigation safety. However, there remains the problem of protection of the reasonable use against interference and in this regard, the radar towers are analogous to the nuclear weapon tests. Neither situation would permit the use of military force to prevent interference in the absence of armed attack and each is of a nature that allows the use

and the following statement is made:

of lesser, or administrative force, to prevent interference.

The air defense warning systems employed by the United States are also justifiable on the same basis plus the additional justification of a condition of entry since the United States requires identification for only inbound aircraft.

In October 1962 the United States ascertained that the Republic of Cuba had agreed to allow the Soviet Union to set up operational medium range missiles with nuclear capability in Cuba. The government of the United States considered this agreement so dangerous to western hemispheric security that it took action to prevent its implementation. The action of the United States included a naval blockade of Cuba which was designed to prevent the importation of missiles. The warships employed in the blockade were ordered to halt any ship capable of carrying a missile, search it, and prevent it from entering Cuba if it carried missiles. Assuming, without deciding, that the implementation of the Soviet-Cuban agreement would constitute a threat of force in violation of Article 2, section 4 of the United Nations Charter, was the method employed by the United States permitted by international law?

The following table gives the number of cases of cholera reported up to the 1st of October, 1854, in each of the 31 states, and the District of Columbia, and also the number of deaths from cholera reported up to the same date. The figures are taken from the reports of the State Health Officers, and the figures for the District of Columbia are taken from the report of the Commissioner of Health.

State or District	Number of Cases	Number of Deaths
Alabama	10	10
Arkansas	1	1
California	1	1
Connecticut	1	1
District of Columbia	1	1
Florida	1	1
Georgia	1	1
Hawaii	1	1
Illinois	1	1
Indiana	1	1
Iowa	1	1
Kansas	1	1
Louisiana	1	1
Maine	1	1
Maryland	1	1
Massachusetts	1	1
Michigan	1	1
Minnesota	1	1
Mississippi	1	1
Missouri	1	1
Nevada	1	1
New Hampshire	1	1
New Jersey	1	1
New Mexico	1	1
New York	1	1
Pennsylvania	1	1
Rhode Island	1	1
Tennessee	1	1
Vermont	1	1
Virginia	1	1
Washington	1	1
Wisconsin	1	1
Total	31	31

In the nuclear testing situation discussed above, the United States was making reasonable use of the sea and any question of force involved a protection of that right to use the sea. In the Cuban Blockade, the United States was not attempting to protect its right to make reasonable use of the sea but was restricting through the use of force, the right of others to use the sea in order to protect yet another right, i.e., territorial integrity.

The application of force to prevent a completely free use of the sea is not contrary per se to the principle of freedom of the sea, i.e., the enforcement of custom or sanitary regulations. However, it is here that some limitation of "administrative police powers" must be established in order to avoid an application of excessive force. The nature and purpose of administrative enforcement precludes the employment of military machinery to accomplish its ends.<sup>69</sup> It can therefore be concluded that a blockade of Cuba by United States warships was not within the category of administrative police powers but obviously in the category of self-defense involving a military commitment. Thus, while unilateral

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<sup>69</sup>For example, the regulations pertaining to the sea are enforced by the United States Coast Guard, an organization completely separate from the military arm of the Government during peacetime.

After consideration of the various options presented at the time the  
proposal was made by the Governor of Cape Colony, as mentioned  
above, the Government decided to go ahead with the construction of the  
new bridge.

force of an administrative nature might be used within the scope of the United Nations to protect territorial integrity in the absence of an "armed attack," the same cannot be said for the use of military force absent an armed attack. Therefore, if it is granted that self-defense in customary international law was altered by the United Nations Charter to exclude the exertion of unilateral or collective force without its direction, except in the case of armed attack, the action of the United States was contrary to international law.

The defense of rights that may affect the use of the sea is not confined to matters pertaining to military security. In 1945, the United States proclaimed that the natural resources of the sub-soil and sea-bed of its continental shelf<sup>70</sup> were subject to its jurisdiction and control.<sup>71</sup> This continental shelf concept was readily accepted in the international community as is evidenced by results of the 1958 Convention on the Continental Shelf,<sup>72</sup> Article 2 of which states in part,

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<sup>70</sup>A submarine plain bordering the majority of continents which drops off sharply at depths varying from 100 to 200 fathoms.

<sup>71</sup>Presidential Proclamation No. 2667, 59 Stat. 884 (1945).

<sup>72</sup>The Convention on the Continental Shelf was adopted by the United Nations Conference on the Law of the Sea, April 29, 1958.

force of an administrative nature might be used within the

scope of the United Nations to protect territorial integrity

in the absence of an "armed attack," the same cannot be said

for the case of military forces present in armed attack. There-

fore, if it is desired that self-defense in situation of inter-

sition was limited by the United Nations Charter to

exclusive exercise of authority or collective force with

one's own direction, except in the case of armed attack, the

action of the United States was contrary to international

law.

Type definition of rights that may affect the use of force

was not contained in either of the two main documents of military security.

In 1948, the United States recommended that the United Nations

sources of the map-mail and air mail continuing their

use except for its jurisdictional purposes. This does

impliedly accept the right to self-defense in the inter-

national community as it existed prior to 1928

Consultation on the Constitutionality of the Map-mail

system in part,

100 suspended by this procedure the authority to continue

use of the globe of the earth at depths varying from 100 to 500

feet.

Proposed resolution No. 262, 2d Sess., UN (1948).

As the Consultation on the Constitutionality of the Map-mail

the United Nations Conference on the Law of the Sea, which

SA, 1958.

1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

Therefore, unlike the weapon testing in the Pacific discussed above, there is here less need to justify the use of the sea prior to attacking the problem of defending that right should others interfere with its exercise. However, in the area of defense of the established right they appear to warrant identical solution, each being of a nature that would permit the use of "force," i.e., administrative force which is distinguishable from the concept of "force" as it is used in Article 2 of the United Nations Charter.

To summarize, the principle of self-defense was limited by Article 51 of the United Nations Charter in 1945 in hopes that the limitation would aid in the overall purpose of the Charter to bring the use of force effectively within the rule of international law. The force or coercion at which the Charter was directed was that type of force or coercion which by its very nature either resulted in clash of arms or was very likely to escalate to such a state. Coercions of a relatively low level of intensity and magnitude, those which are of an administrative nature and unescapable

The Constitutional Right to Privacy over  
Reproductive Rights is a Right to Privacy.  
Privacy is the Right to Privacy.

is made in Article 2 of the United Nations Charter, which is distinguishing the concept of "force" as it may be used in international relations, such period of a certain type of military intervention or military exercise. However, in case there is some kind of aggression or violation of the principles of the UN Charter, there is no need to wait for a specific legal opinion, since force can be used to defend the member states from such aggression.

in an international community of states interacting and competing and which are directed, not against an individual state but against all states, were not meant to be included within the prohibition for to do so would impede international relations to such an extent as to render them unworkable.<sup>73</sup>

## Chapter IV

### Conclusion's

Which of these two principles of international law is most important and in what framework will the term "important" be defined? The framework must be the mutual benefit of the international community. If the principle of self-defense is minimized will there be a true community left to enjoy the benefits, present and predicted, of the sea? It is obviously asking too much of a state to totally forego the right to use force in self-defense but this is neither proposed or necessary. There is a middle ground on which states might accept limitations upon its right to exert force in self-defense in turn for safeguards that minimize the risk of doing so. However, before any such system can be realized there must be a willingness on the part of states to reexamine the archaic "feelings" about nationalism with

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<sup>73</sup>Op. cit. supra. n. 62 at 212-13.

In a jurisdiction community of which the population is composed  
of individuals as tenancy for life with the right to  
behold one of these tenures, there is no estate in tenancy and estate  
in joint tenancy being of the nature of an undivided interest in  
the same property.

Chopsticks

## **Classification**

of mechanisms for selecting "leading" nodes in a network. However, neither of these two approaches can be used to select nodes in a network that is not fully connected. In this case, we can use a different approach based on the concept of "influence". The influence of a node is defined as the probability that it will be selected as a seed if there is no information about the network structure. This measure is called "influence" and it is calculated as follows:

$$influence(i) = \frac{1}{|V|} \sum_{j \neq i} \frac{1}{d(i,j)} \cdot \frac{1}{\max(d(i,j), 1)}$$

a view towards replacing them with contemporary "thoughts" about nationalism. The quantum gains in technology shrink the world daily and nations must learn to cooperate if there is to be long term mutual benefit rather than short term nationalistic benefit.

Within the framework of mutual benefit to the international community, the principle of freedom of the sea should progress while the principle of self-defense should decline in proportion to the growth of effective control of force through law. For this reason the principle of freedom of the sea might be considered superior to the principle of self-defense, however, the contemporary world scene dictates that the former be subsumed to the latter until there is effective international control of force through law.

It is difficult to disagree with the purpose of the United Nations but it is more difficult to disagree with the proposition that the mechanics through which these purposes hoped to be realized have failed. The greatest failure has unfortunately been in the area which offered the only real solution to control of force through peace, The International Court of Justice. All members of the United Nations are members of the Court, however, submission to its jurisdiction



is voluntary and even then it may be conditional.<sup>74</sup>

If the machinery for effective control of force through law has failed to function as planned, can the law, in this case the limitation of the principle of self-defense by Article 51 of the United Nations Charter, be ignored? One author answers the question as follows:

...the rule of the Charter against unilateral force in international relations is the essence of any meaningful concept of law between nations, and the foundation on which rest all other attempts to regulate international behavior... I see nothing in present international society - in the cold war, in terrible weapons, in new nations, in the consequent changes in the United Nations - to suggest that it is desirable or necessary to modify or relax that law. Indeed, the new weapons and the new terrors of war, yet undreamed of when the Charter was written, render it even more important that law should exert its every influence to deter nations from initiating any force which might expand and escalate into total destruction. The interests of nations, their wants of security and welfare, even their quests for justice and human rights, must be pursued by many other means, but not by unilateral force.<sup>75</sup>

Others maintain that states must revert to customary international law in the face of the failure of the United Nations

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<sup>74</sup>All members of the United Nations are members of the International Court but membership is not synonymous with submission to its jurisdiction. Submission to the Courts jurisdiction is on a voluntary basis and even then can be conditional. As of 1961 only 39 nations had voluntarily submitted to jurisdiction and these submissions included a myriad of conditions. Larson, When Nation Disagree 73, (1961).

<sup>75</sup>Henkin, Proceedings of the American Society of International Law 153, (1963).

It is important to note that it may be conditional.

an offshoot of the main Mithraic cult, which had spread from Persia to the Roman Empire.

to effectively control force.

Of the first position it must be asked by which ... "many other means" ... may the affective security interest of a nation be pursued, for example, in the Cuban blockage. What were the alternatives? Non. Was the interference with the free use of the sea through force illegal in international law? Yes, the law has not been repealed merely because the enforcement machinery has failed to function. The maximum, rebus sec stantibus<sup>76</sup> is unhelpful if an affective legal order is hoped to be achieved.

The United States, with her great military and economic power, has a hegemonious responsibility to move the international community towards the goal of affective legal control of force but this responsibility also includes a duty to assure that international community arrives in one piece thus there will be times when it considers the use of a minimal amount of force, unilaterally applied, necessary if the overall goal is to be obtained. There are obvious imperfections in such a course of action but in an imperfect world these are to be expected and should not be justified

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<sup>76</sup>If the basis upon which an international agreement was made no longer exist or have radically altered, the agreement no longer binds.

to file a complaint for

The maximum, reps see  $\sigma$  of  $\sigma$ , is independent of the number of cycles. Because the entropic effect is negligible, the entropy of function. Therefore, if  $\sigma$  is not pure, the entropy of function. Yes, this is not true. The use of the sees strongly force initial in inductive inference. What was the inductive inference now. Was the inductive inference. For example, in the case of the computer programs. One option is "yes..." or "no". The selective sensitivity interest.

The United States, with its great military and economic power, has a predominant responsibility to help the international community to keep the peace and to maintain a just and stable international order. The United States must take a leading role in the promotion of world peace and security, and it must do so in accordance with the principles of justice, democracy, and freedom. The United States must also work closely with other countries to promote international cooperation and to resolve disputes peacefully. The United States must also support the principles of human rights and democracy, and it must do so in accordance with the principles of justice, democracy, and freedom.

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that no place upon which a tax can be levied  
can be so limited as to make it illegal, if the  
same is to be imposed.

through a process of legal gymnastics in order to prove them "legal."

The principle of a free sea embodies the foundation of a community interest that cannot be ignored. "We need to build a world community of interests before we can establish a world regime under law."<sup>77</sup> Only the sea of all man's resources has proved susceptible of communal use and hopefully the sea will give birth to the "community of interest" necessary for existence under law as it gave birth to man himself.

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<sup>77</sup>Patterson, Men and Ideas of the Law 414, (1953).

process of legalization in order to prove their  
"legality".

The principle of a free speech embodies the foundation  
of a country that cannot be ignored. We need  
a community of individuals before we can  
build a society under law." Only the one of the  
few, a lessor voice has proved susceptible to community as and  
potentially the few will give priority to the "community of in-  
terest" necessary for existence under law as it gave priority  
to man himself.

Conclusion, new and ideas of the law are, (1953).

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Self-defense and freedom of the seas.



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